originally issued in 1943[2] pursuant to Section 23(a)(2) of the 1939 Code, as amended by Section 121(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798, 819, which, so far as pertinent here, was reenacted in substantially unchanged form as Section 212 of the 1954 Code. At no time since it was first issued has the regulation been changed in any way material to this case. Moreover, a substantially identical regulation defining capital expenditures has been in force since 1917.[3] This case thus comes within the settled principle that "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." *Helvering* v. *Winmill*, 305 U.S. 79, 83; *Fribourg Nav. Co.* v. *Commissioner*, 383 U.S. 272, 283; *United States* v. *Correll*, 389 U.S. 299, 305-306.[4]

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[2] At that time, it appeared in Treasury Regulations 111, Section 29.23(a)(15).

[3] Treasury Regulations 33 (1918 ed.), Article 8, par. 106 (effective October 4, 1917); Treasury Regulations 45 (1920 ed.), Article 293; Treasury Regulations 62, Article 293; Treasury Regulations 65, Article 292; Treasury Regulations 69, Article 292; Treasury Regulations 74, Article 282; Treasury Regulations 77, Article 282; Treasury Regulations 86, Article 24-2; Treasury Regulations 94, Article 24-2; Treasury Regulations 101, Article 24-2; Treasury Regulations 103, Section 19.24-2; Treasury Regulations 111, Section 29.24-2; Treasury Regulations 118, Section 39.24(a)-2; Treasury Regulations (1954 Code), Section 1.263(a)-2(c).

[4] The decision below represents a correct application of the broader principle that capital expenditures cannot be currently deducted but must be added to the cost basis of the

3. Cases cited by petitioner (Pet. 10) hold, consistent with the decision below, that the expenses of litigation involving title to property constitute part of the cost of the property and are not currently deductible. Indeed, both the Sixth and Ninth circuits have specifically considered and rejected the precise claim made by petitioner that such expenses are deductible where the attack on title is completely unfounded. *Safety Tube Corp.* v. *Commissioner*, 168 F. 2d 787 (C.A. 6); *Schwabacher* v. *Commissioner*, 132 F.2d 516 (C.A. 9). See also *Brand* v. *Commissioner*, decided January 30, 1953 (P-H Memo T.C., par. 53,029), affirmed *per curiam*, 209 F. 2d 255 (C.A. 6), certiorari denied, 347 U.S. 968. The rule thus is uniform in the circuits against petitioner's position.[5]

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asset for purposes of computing gain or loss on disposition. While this rule is generally involved in *Woodward* v. *Commissioner*, 410 F. 2d 313 (C.A. 8), taxpayer's petition for a writ of certiorari pending, No. 412, this Term, and *Hilton Hotels Corp.* v. *United States*, 410 F. 2d 194 (C.A. 7), government's petition for a writ of certiorari pending, No. 528, this Term, those cases do not concern the deductibility of title defense costs but whether appraisal costs incurred in connection with the acquisition of property are currently deductible or are nondeductible capital outlays. Moreover, the Seventh and Eighth Circuits both recognize that if the primary purpose of a suit is to defend or perfect title, expenditures incurred in connection therewith are not deductible. *Kelly* v. *Commissioner*, 228 F. 2d 512, 514-515 (C.A. 7); *Woodward* v. *Commissioner*, *supra*, p. 315. Plainly, this is the case here in view of the court of appeals' characterization of Hannah's action as "purely and simply an attempt to void Samuel's title to the stock" (Pet. App. 10a).

[5] Petitioner relies (Pet. 18) on *Hochschild* v. *Commissioner*, 161 F. 2d 817 (C.A. 2); *Sergievsky* v. *McNamara*, 135 F. Supp. 233 (S.D.N.Y.); and *Zietz* v. *Commissioner*, 34 T.C. 369, acquiescence on this issue, 1960-2 Cum. Bull. 7. The

4. Petitioner's argument (Pet. 7-8) that the decision herein conflicts with *United States* v. *Gilmore*, 372 U.S. 39, rests upon the premise that Hannah's suit constituted a claim to income because she had only an income interest in Jacob's estate. Nothing in *Gilmore*, indicates, however, that the result would have been different had the ex-wife of the taxpayer there sought a life interest rather than a fee interest in her former husband's property. In *Gilmore* the suit was, on its face, one for divorce (a personal matter) and it was the purely personal nature of the issue thus raised which fixed the character of the litigation expenses. Here, Hannah's claim simply involved the right to title to the Peek stock and the capital nature of her claim also fixes the character of the litigation expenses. The decision below is, therefore, fully in accord with the rule in *Gilmore*.

5. Finally, petitioner advances arguments (Pet. 9, 19-20) (citing this Court's decisions in *Trust of Bingham* v. *Commissioner*, 325 U.S. 365, and *Dobson* v. *Commissioner*, 320 U.S. 489) to the effect that the court of appeals should have accorded greater weight to the conclusions of the Tax Court. But the rule

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first two cases cited are distinguishable, as the court of appeals pointed out (Pet. App. 8a-10a). In *Zietz*, the legal expenses in question arose out of an attempt to attach taxpayer's securities, rather than to obtain title to them. The court noted that had the attempt been successful, taxpayer would have lost the income from the securities, at least temporarily, but not title. Furthermore, since *Hochschild*, like this case, was decided by the Second Circuit, and since *Sergievsky* and *Zietz* are lower court decisions, there would be no conflict among the circuits warranting review by this Court even if any of these cases were inconsistent with the decision below.

of *Dobson* (cited and relied upon in *Trust of Bingham, supra*) was set aside by Congress in 1948 by the enactment of Section 1141(a) of the 1939 Code (now Section 7482 of the 1954 Code) and since that time the decisions of the Tax Court have been subject to the same "clearly erroneous" rule on review as those of the district courts. See 9 Mertens, Law of Federal Income Taxation (Rev.), Section 51.23. Moreover, the issue in the instant case was solely one of law (the proper legal construction of the provision of the Regulations, *supra*, that expenses of "defending" title to property are not deductible), as petitioner concedes (Pet. 19). There is no dispute as to the facts or inferences from facts which could have come under the *Dobson* rule had it not been set aside.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX

Internal Revenue Code of 1954:

SEC. 212. EXPENSES FOR PRODUCTION OF INCOME.

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year—

(1) for the production or collection of income;

(2) for the management, conservation, or maintenance of property held for the production of income; or

(3) in connection with the determination, collection, or refund of any tax.

[26 U.S.C. 212.]

Treasury Regulations on Income Tax (1954 Code):

Sec. 1.212-1 *Nontrade or nonbusiness expenses.*

* * * *

(k) Expenses paid or incurred in defending or perfecting title to property, in recovering property (other than investment property and amounts of income which, if and when recovered, must be included in gross income), or in developing or improving property, constitute a part of the cost of the property and are not deductible expenses. Attorneys' fees paid in a suit to quiet title to lands are not deductible; but if the suit is also to collect accrued rents thereon, that portion of such fees is deductible which is properly allocable to the services rendered in collecting such rents. Expenses paid or incurred

in protecting or asserting one's right to property of a decedent as heir or legatee, or as beneficiary under a testamentary trust, are not deductible.

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[26 C.F.R. 1.212-1.]

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